

Banner & Witcoff Case No. 3797.80030

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Here Application of: Khurshed Mazhar et al.)

Serial No. 09/411,171) Art Unit: 2756

Filed: October 1, 1999) Examiner: _____ RECEIVED

For: Windows Radio Toolbar)

#5

APR 04 2000

OFFICE OF PETITIONS
DEPUTY A/C PATENTS

**DECLARATION OF D. BARTLEY EPPENAUER
IN SUPPORT OF RULE 1.47 PETITION**

TO FILE APPLICATION WHEN INVENTOR CANNOT BE REACHED

I, D. Bartley Eppenauer, hereby state as follows:

1. I am an in-house patent attorney for Microsoft Corporation, who is the assignee of this application. And, I am the Microsoft attorney responsible for supervising prosecution of this application.

2. Kevin Warne is one of the named inventors on this application. For a period of time prior to April 9, 1999, Mr. Warne provided consulting services to Microsoft. As a result of Mr. Warne's work for Microsoft, the other inventors on this case believed that Mr. Warne should be named as a co-inventor.

3. Shortly after we learned that Mr. Warne should be named as a co-inventor, a paralegal with whom I work (Kymerie Schmidt) and I made numerous attempts to contact Mr. Warne and have him review the patent application.

4. We attempted to contact him via email. However, Mr. Warne did not have an internal Microsoft email address.

5. Since Microsoft did not have a home address for Mr. Warne, we asked the inventors if they knew where Mr. Warne was or how to contact him.

One of the inventors, Mr. Mazhar, thought that Mr. Warne went to work for Real Networks.

6. On or about August 19, 1999, I tried to call Mr. Warne at home at (425) 576-0860. I was unable to reach Mr. Warne at home, so I then tried to call him at Real Networks. The receptionist said that no one by the name of Kevin Warne had previously worked or currently works at Real Networks.

7. I called Mr. Warne's former employer, Harris & Associates, at (206) 232-9330. I spoke with a secretary who confirmed that Mr. Warne's home-telephone number was (425) 576-0860.

8. I called Mr. Warne at this home-telephone number and left a message on his answering machine. Mr. Warne did not return my call.

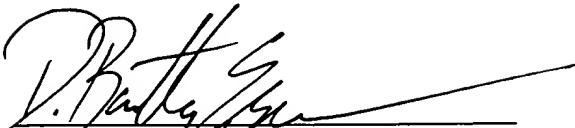
9. Ms. Schmidt called Mr. Warne again to follow up on or about September 27, 1999. There was no answer and there was no information on the answering-machine recording to indicate whether or not Mr. Warne lived there.

10. Ms. Schmidt then proceeded to call directory assistance in an attempt to find Mr. Warne's current telephone number. Directory assistance did not have a telephone number for Mr. Warne.

11. I again called Mr. Warne's former employer, Harris & Associates, at (206) 232-9330. This time I spoke with a principal of Harris & Associates—Ray Murphy. Mr. Murphy refused to divulge Mr. Warne's home address or provide other contact information.

I declare under the penalty of perjury that the statements made by me in this declaration are true and correct.

Respectfully submitted,

By: 

Date: March 21, 2000

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